

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY E. FOREMAN,	§	
	§	No. 458, 2005
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Cr. ID No. 0209008459

Submitted: January 30, 2006

Decided: March 28, 2006

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 28th day of March 2006, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In September 2003, the appellant, Gregory E. Foreman, pleaded guilty to Escape in the Second Degree. The Superior Court sentenced Foreman to two years at Level V suspended after six months for eighteen months of probation. The Superior Court also ordered that Foreman "be evaluated for

substance abuse and follow any recommendations for counseling, testing or treatment deemed appropriate.”¹

(2) On December 28, 2004, Foreman was charged with having violated the conditions of his probation, including that he had refused to submit to a random drug screen. When Foreman failed to appear at the violation of probation (VOP) hearing that was scheduled for January 18, 2005, the Superior Court issued a *capias* for his return. Upon Foreman’s apprehension the following August, a VOP hearing was scheduled for August 30, 2005.

(3) At the VOP hearing, Foreman admitted that he had not complied with the Superior Court’s order to be evaluated for substance abuse and denied the remaining allegations of VOP. At the conclusion of the hearing, the Superior Court found Foreman guilty of VOP and sentenced him to two years at Level V suspended upon successful completion of the Level V Key and Level IV Residential Substance Abuse Treatment programs for Level III aftercare. This appeal followed.

(4) On appeal, Foreman’s defense counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying

¹*State v. Foreman*, Del. Super., Cr. ID No. 0209008459, Graves, J. (Sept. 2, 2003).

brief under Rule 26(c) is twofold. First, the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.² Second the Court must conduct its own review of the record and determine whether the appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.³

(5) Foreman's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. Counsel informed Foreman in writing of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief. Counsel also informed Foreman of his right to supplement her presentation.

(6) Foreman did not submit any points for this Court to consider. The State has responded to the position taken by Foreman's counsel and has moved to affirm the Superior Court's judgment.

(7) The Court has reviewed the record carefully and has concluded that Foreman's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Foreman's counsel made a

²*Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

³*Id.*

conscientious effort to examine the record and the law, and that she properly determined that Foreman could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice